

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080076
	:	TRIAL NO. B-0103412
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MARCUS HAYES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Marcus Hayes appeals his conviction for corrupt activity. Because neither of his assignments of error has merit, we affirm the judgment of the trial court.

In May 2001, Hayes was indicted for one count of corrupt activity in violation of R.C. 2923.32. He pleaded guilty to the charge on March 25, 2003. Before accepting his guilty plea, the trial court conducted a Crim.R. 11 colloquy with Hayes to ensure that the plea was knowing, intelligent, and voluntary. After accepting Hayes's guilty plea, the court scheduled the sentencing hearing for May 15, 2003. The trial court also continued Hayes's bond.

At Hayes's request, sentencing was continued until June 19, 2003. Hayes did not appear for sentencing on that day. The trial court issued a capias for his arrest. Hayes was taken into custody in October 2007. In the interim, he had gone to New York and had been arrested for and convicted of another charge.

¹See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Hayes was represented by new counsel during his Hamilton County sentencing hearing. Before he was sentenced, Hayes made an oral motion to withdraw his guilty plea. According to Hayes, he had asked his previous counsel to file a motion to withdraw the plea the day after he had pleaded. No motion had been filed. The trial court conducted a hearing on Hayes's oral motion. At the conclusion of the hearing, the court denied the motion and sentenced Hayes to seven years in prison.

In his first assignment of error, Hayes asserts that the trial court erred when it denied his presentence motion to withdraw his plea.

The decision to grant or deny a defendant's presentence motion to withdraw a guilty plea is within the sound discretion of the trial court.² In *State v. Ellison*, we listed factors that an appellate court should consider when determining whether a trial court's denial of a motion to withdraw a plea was an abuse of discretion: "(1) whether the defendant was represented by highly competent counsel; (2) whether the defendant was afforded a complete Crim.R. 11 hearing before entering the plea; (3) whether the trial court conducted a full and impartial hearing on the motion to withdraw the plea; (4) whether the trial court gave full and fair consideration to the motion; (5) whether the motion was made within a reasonable time; (6) whether the motion set out specific reasons for the withdrawal; (7) whether the defendant understood the nature of the charges and the possible penalties; (8) whether the defendant was possibly not guilty of the charges or had a complete defense to the charges; and (9) whether the state would have been prejudiced by the withdrawal."³

In light of those factors, we conclude that the trial court did not abuse its discretion when it denied Hayes's motion to withdraw his plea. The trial court found that Hayes had been represented by highly competent counsel. The trial court conducted a complete

² *State v. Xie* (1992), 62 Ohio St.3d 521, 527, 584 N.E.2d 715.

³ (May 26, 2006), 1st Dist. No. C-050553, 2006-Ohio-2620, ¶13.

Crim.R. 11 colloquy with Hayes, and it appears from the record that Hayes understood the charge against him and the potential sentence. The trial court conducted a full and fair hearing on Hayes's oral motion. And there is nothing on the record that indicates that Hayes had a complete defense to the charge. The prejudice to the state if Hayes had been permitted to withdraw his plea after such a long delay is clear. The first assignment of error is not well taken.

In his second assignment of error, Hayes asserts that the trial court erred when it sentenced him to seven years. Hayes contends that he had accepted the plea with the understanding that he would receive no more than a two-year prison term. This contention is not supported by the record. Even if there had been an agreement about the sentence that would be imposed, the trial court clearly told Hayes that the court could sentence him to the maximum term of eight years if Hayes did not appear for sentence. Hayes did not appear for sentencing for over four years. The seven-year sentence was within the range permitted for a second-degree felony. And we conclude that it was not contrary to law. The second assignment of error is overruled.

We, therefore, affirm the judgment of the trial court.

SUNDERMANN, P.J., PAINTER and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 8, 2008

per order of the Court _____.
Presiding Judge